IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.E.A. No.125 of 2006
Date of decision: November 20, 2006

Commissioner of Central Excise Commissionerate, Ludhiana.

-----Appellant

Vs.

M/s Avon Cycles Ltd, Ludhiana.

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mrs. Daya Chaudhary, Assistant Solicitor General of India for the appellant.

ORDER:

This appeal has been preferred under Section 35(G) of the Central Excise Act, 1944 (for short, "the Act") by revenue against the order dated 27.12.2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, proposing following substantial questions of law:-

"i) Whether the respondent firm is liable to pay Central Excise duty under the circumstances without being registered with the deptt., not making payment of duty and working without license?

ii) Whether the act and conduct of the respondent firm tantamount to suppression of facts from the department?

iii) Whether the extended period of five years as envisaged under Section 11A of Central Excise Act is invokable?"

The revenue raised demand of duty in regard to steel structures and part thereof got fabricated by the assessee on job work, in terms of the contracts. Demand was raised beyond the period of limitation specified under Section 11A of the Act, though within the extended period of limitation, applicable in a circumstance where the assessee is guilty of wilful suppression of facts with an intent to evade payment of duty.

The assessee claimed that in the process of execution of civil contract, manufacture of excisable goods was not involved.

The claim of the assessee was rejected. Though it was noted that in execution of civil contract, manufacture of excisable goods may not be involved, a case for invoking extended period of limitation was held to have been made out.

The Tribunal accepted the claim of the assessee relying upon observations made by the Hon'ble Supreme Court in ***Pahwa Chemicals Pvt. Ltd.*** **v.** ***CCE Delhi*** (2005) 129 ECR 113, which are to the following effect:-

> "The appellants have all along claimed that merely because they were affixing the label of a foreign party, they did not lose the benefit of Notification No.175/86-CE as amended by Notification No.1/93-CE. The view taken by the appellants had, in some case, been approved by the Tribunal, which had held that mere use of the name of a foreign party did not dis-entitle a party from getting benefits of the notification. It is only after larger bench held in Namtech Systems Limited Vs. Commissioner of Central Excise, New Delhi reported in 2000(115) ELT 328 (Tribunal) that the position has become clear. It is settled law that mere failure to declare does not amount to willful mis-declaration or willful suppression. There must be some positive act on the part of the party to establish whether willful mis-declaration or willful suppression. When all the facts are before the Department and a party in the belief that affixing of a label makes no difference does not make a declaration, and then there would be no willful mis-declaration or willful suppression. If the department felt that the party was not entitled to the benefit of the Notification, it was for the department to immediately take up the contention that the benefit of the notification was lost."

The Tribunal further observed that prior to judgment of the Tribunal in ***Mahindra & Mahindra Ltd. v. CCE, Aurangabad, Chandigarh, Kanpur and Chennai*** (2005) 190 ELT 301, there was a debate on the question whether structures and parts thereof are dutiable and during the relevant period, the law was not clear on the point.

The relevant observations of the Tribunal are as under:-

> "While on the question of limitation, we may also note that the issue of dutiability of structures and parts thereof came to be concluded in favour of the Revenue only by the recent judgement of the larger bench of this Tribunal in the case of Mahindra & Mahindra Ltd. Vs. CE, Aurangabad, Chandigarh, Kanpur and Chennai, reported in 2005 (190) ELT 301 (Tri. LB). It is also to be noted that there was no demand of duty on such items till the amendment of heading 73.08 w.e.f. March 1990. Thus, during most of the period impugned in these appeals, the appellants activity did not attract excise duty at all. For this reason also, it is to be found that non levy of duty was not the result of willful acts with intent to evade payment of duty by the appellants."

In view of above, it cannot be held that the assessee had suppressed the facts entitling the revenue to invoke extended period of limitation. Thus, no substantial question of law arises for consideration.

The appeal is dismissed.

Before parting with the order, it may be noticed that the order of the Tribunal is a composite order in three appeals, but while filing appeal in one of the cases, it has not been mentioned as to what is the stand of the revenue with regard to other two matters. Learned counsel for the revenue is also not aware of this aspect. Such a practice cannot be approved. Once a composite order is passed by the Tribunal, it was obligatory on the revenue, while filing one appeal, to mention its stand about other cases, to avoid conflict of orders and also to maintain consistency. No steps have been taken in this direction inspite of the fact that this has been pointed out to the appellants a number of times, earlier. We hope that atleast in future, the appellant will take care to furnish relevant information while filing such cases.

(ADARSH KUMAR GOEL)
JUDGE

November 20, 2006 **(RAJESH BINDAL)**
ashwani **JUDGE**